

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ISADORE GARTRELL,
Plaintiff

v.

FEDERAL BUREAU
OF PRISONS, *et al.*,
Defendants

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: CIVIL NO. 1:10-CV-2160
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O R D E R

The background of this order is as follows:

The instant case is a Bivens action,¹ in which Plaintiff claims that Defendants violated the Religious Freedom Restoration Act ("RFRA") and the Equal Protection Clause. Plaintiff's complaint concerns a prison policy that designates specific areas of the prison as permissible places for prayer and prohibits prayer in other locations. As a Muslim, Plaintiff's religious beliefs require him to pray five times daily. Plaintiff alleges that, because the policy prohibits him from praying while he is at work or recreation, it creates a substantial burden on his free exercise of religion, without furthering a compelling governmental interest. Plaintiff also contends that Defendants permit similarly situated non-Muslims to pray in locations other than the designated areas, and thereby, they deny him equal protection of the laws.

¹ Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).

Presently before the court is Defendants' motion (Doc. 17) to dismiss, or in the alternative, for summary judgment. Defendants' arguments are as follows:

(1) Plaintiff's claims against the prison's new "Muslim Prayer Policy" must be dismissed for failure to exhaust administrative remedies,² (2) claims against Defendants in their official capacities must be dismissed on the basis of sovereign immunity, (3) all claims against Defendants should be dismissed because Defendants lacked personal involvement, and (4) Defendants are entitled to summary judgment on the merits of Plaintiff's claims. The court will address these arguments in turn.

² In 2009, through the administrative remedy process, Plaintiff requested permission to pray at his work site and on recreation grounds. In response, the prison chaplain issued a memorandum noting that prayer was permitted only in the Religious Services area or in an inmate's assigned cell. Plaintiff was also advised that, if he needed to go to one of those areas in order to complete a prayer, he could submit a written request to his work supervisor, and arrangements would be made to accommodate his request.

In July or August of 2010, Plaintiff's counsel sent a letter requesting that Plaintiff be permitted to pray at his work site and in the recreation area. On September 24, 2010, the warden issued a memorandum setting forth the policy to which the parties refer as the "Muslim Prayer Policy." The memorandum provided that any inmate who wanted to participate in the midday prayer could request to be returned to his assigned cell during the 12:30 p.m. to 1:30 p.m. open movement, in order to conduct the prayer. Regardless of where the inmate was supposed to be located during that time, the inmate could be returned to his cell at 12:30 p.m., and returned back to his assigned location at 1:30 p.m. (Later, on March 21, 2011, the warden changed the movement times to 1:30 p.m. to 2:30 p.m., presumably because prayer times vary, depending on the time of year.)

Defendants admit that Plaintiff exhausted his administrative remedies with respect to any claims against the original policy that limited prayer to specified areas, but they argue that he did not exhaust any claims concerning the "Muslim Prayer Policy" instituted on September 24, 2010.

Defendants' argument concerning exhaustion invites the court to draw a fine line between claims that Plaintiff exhausted and the claims that Defendants allege he failed to exhaust. Specifically, Defendants concede that Plaintiff exhausted the claim that the prison policy burdens his religious practices, the claim that Defendants permitted inmates of other religions to pray in locations other than the designated areas, and the claim that Defendants penalized Muslim inmates for doing so. However, Defendants contend that Plaintiff failed to exhaust his claims concerning the "Muslim Prayer Policy" of September 24, 2010—in particular, that this policy burdens his religious practices, and that Muslims were penalized pursuant to this policy.

We are not persuaded that, in the instant case, Plaintiff raises separate challenges against the original policy and the Muslim Prayer Policy, which he must exhaust separately. Nor are we convinced that the claims Plaintiff raises here must be distinct from the issues raised in his grievance, simply because the Muslim Prayer Policy was implemented in the interim. In his grievance, Plaintiff requested permission to pray at his work site and on recreation grounds, conduct prohibited by both policies. We see no basis to conclude that requiring Plaintiff to re-raise the same request, after the Muslim Prayer Policy took effect, would afford Defendants a more fair opportunity to consider the relevant issues. To the contrary, we conclude that Defendants have already had a fair opportunity to do so. We will therefore reject their exhaustion argument and turn to the issue of sovereign immunity.

Sovereign immunity generally protects the government—and, by extension, government officials in their official capacities—from suit, unless the government has explicitly waived sovereign immunity. Defendants aver that “[t]he United States has not waived sovereign immunity in a Bivens suit for monetary damages.” (Doc. 19 at 18). However, Plaintiff’s opposition brief indicates that “Plaintiff has voluntarily dismissed his claims for monetary relief” and argues that “[t]he United States has . . . waived sovereign immunity for claims that seek non-monetary remedies, such as injunctive or declaratory relief, against federal officials.” (Doc. 23 at 7). Hence, we will reject Defendants’ argument concerning sovereign immunity.

Turning to Defendants’ argument that they lacked personal involvement, we conclude that Plaintiff’s Complaint (Doc. 1) sets forth sufficient allegations of personal involvement to survive a motion to dismiss.³ (See Doc. 1 ¶¶ 50-55, 57). Defendants’ argument that they were merely enforcing prison policy is unavailing, because Plaintiff’s allegations suggest that Defendants knew about the conditions about which Plaintiff complained, (see id.), and—at least in some cases—such knowledge and acquiescence can support a finding of personal involvement. See Atkinson v. Taylor, 316 F.3d 257, 270-71 (3d Cir. 2003). Therefore, we will not grant defendants’ motion on this basis.

³ If we assume, *arguendo*, that Defendants seek summary judgment, rather than dismissal, for lack of personal involvement, we would deny summary judgment. Plaintiff’s evidence creates a genuine issue of material fact as to Defendants’ personal involvement. If credited, Plaintiff’s evidence could lead a reasonable factfinder to conclude that Defendants were personally involved in the alleged statutory and constitutional violations. (See, e.g., Doc. 23-3 ¶¶ 9, 13-14, 22-23).

Finally, we will address Defendants' contention that they are entitled to summary judgment on the merits of Plaintiff's claims. Plaintiff has raised a claim under the RFRA, as well as an equal protection claim. We will address each in turn.

We are not persuaded that summary judgment should be granted in Defendants' favor on Plaintiff's RFRA claim. The record contains sufficient evidence to lead a reasonable finder of fact to conclude that Defendants substantially burdened Plaintiff's exercise of his religion. Furthermore, Defendants have failed to bring to the court's attention any evidence that they considered and rejected other options, before arriving at the conclusion that the Muslim Prayer Policy is the least restrictive means to protect the compelling government interest in prison security and order. Thus, Defendants are not entitled to summary judgment.

Nor are we convinced that summary judgment is warranted on Plaintiff's equal protection claim. Plaintiff's evidence is sufficient to create a genuine issue of material fact as to whether Plaintiff and other Muslim inmates were treated differently from similarly situated inmates with other religious beliefs. (See, e.g., Doc. 23-3 ¶¶ 22-23). Summary judgment must therefore be denied.

ACCORDINGLY, this 12th day of October, 2011, upon consideration of Defendants' motion (Doc. 17) to dismiss, or in the alternative, for summary judgment, it is ORDERED that said motion is DENIED.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge